



Commonwealth of Virginia
Virginia Information Technologies Agency

SOFTWARE

Optional Use Contract

Date: February 17, 2006

Contract #: VA-060110-TRAD

Authorized User: State Agencies, Institutions, and other Public Bodies
as defined in the VPPA

Contractor: Tradepaq Corporation
33 Maiden Lane
8th Floor
New York, NY 10038

FIN: 13-3869968

Contact Person: Donald Roux
Phone: 212-482-8080 ext. 4816

Term: January 10, 2006 through January 9, 2007

Pricing: Exhibit B

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:
Virginia Information Technologies Agency
Supply Chain Management

Greg Searce
Phone: 804-371-5919
E-Mail: greg.searce@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT # VA-060110-TRAD
CONTRACT CHANGE LOG

[illegible]

**MODIFICATION #1
TO
CONTRACT NUMBER VA-060110-TRAD
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
TRADEPAQ CORPORATION**

This MODIFICATION #1 is an agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and TradePAQ Corporation hereinafter referred to as "Contractor," relating to the modification of the above contract. This Modification #1 is hereby incorporated into and made an integral part of Contract VA-060110-TRAD.

Both of the above referenced parties agree to the following:

Reference: Section D "Invoice Procedures"

Remove "Payment for Services shall be quarterly unless otherwise stated herein, or in any order referencing this Contract."

Replace with "Payment for Services shall be pre-paid annually unless otherwise stated herein, or in any order referencing this Contract."

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS
AND CONDITIONS OF THE CONTRACT.**

TRADEPAQ CORPORATION

BY: Donald Roux

NAME: DONALD ROUX

TITLE: VICE PRESIDENT

DATE: FEBRUARY 6, 2006

COMMONWEALTH OF VIRGINIA

BY: Devy Crenshaw

NAME: Devy Crenshaw

TITLE: Strategic Source Manager

DATE: 2/13/06

SOFTWARE MAINTENANCE CONTRACT

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SOFTWARE MAINTENANCE CONTRACT

THIS SOFTWARE MAINTENANCE CONTRACT ("Contract") is entered into by and between the Virginia Information Technologies Agency (VITA) pursuant to §2.2-2012 of the Code of Virginia, (hereinafter referred to as "VITA") and TradePac/ResQNet.com (Supplier) to be effective as of Jan 10, 2006 (Effective Date). VITA and Supplier are referred to herein individually as "Party" and collectively as the "Parties."

1. PURPOSE

This Contract sets forth the terms and conditions under which Supplier agrees to provide software maintenance services for certain of Supplier's Software to Authorized Users. This Master Agreement is not applicable for nor may it be used for the purchase of software licenses.

2. DEFINITIONS

A. Acceptance

Acceptance shall take the form of completed acceptance testing in conformance with the Requirements as determined by Authorized User.

B. Agent

Any third party independent agent of any Authorized User.

C. Authorized User

All public bodies, including VITA, as defined by §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia.

D. Computer Virus

Any malicious code, program, or other internal component (e.g., computer virus, computer worm, computer time bomb, or similar component), which could damage, destroy, alter or disrupt any computer program, firmware, or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information accessed through or processed by such software in any manner.

E. Confidential Information

Any confidential or proprietary information of a Party that is disclosed in any manner, including oral or written, graphic, machine readable or other tangible form, to the other Party in connection with or as a result of discussions related to this Contract, and which at the time of disclosure either (i) is marked as being "Confidential" or "Proprietary", (ii) is otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of the disclosing Party.

F. Documentation

Those materials detailing the information and instructions needed in order to allow any Authorized User and its Agents to make productive use of the Software.

G. Electronic Self-Help

Any use of electronic means to exercise Supplier's termination rights upon breach or cancellation, termination or expiration of this Contract.

H. Receipt (of Software Update)

An Authorized User or its Agent has physically received the Software Update at the correct ship to location.

I. Requirements

The functional, performance, operational, compatibility, Acceptance testing criteria and other parameters and characteristics of the Software described in the contract under which Authorized User obtained a license(s) to the Software, or performance standards that may be agreed upon in writing by the Parties.

J. Maintenance Services (or "Services")

Any services provided by Supplier under this Contract, including Software Updates, and telephone support for the Software.

K. Software

The Supplier's RescueNet programs and code.

L. Software Update

Any Software patch, fix, upgrade, or update provided by Supplier under this Contract.

M. Supplier

Includes any individual who is an employee, sub-contractor, or independent contractor of Supplier to provide Software and/or Services under this Contract.

N. VITA

Virginia Information Technologies Agency, an agency of the Commonwealth of Virginia pursuant to Chapter 20.1 (§§2.2-2005 et seq.) of the Code of Virginia.

3. TERM AND TERMINATION

This Contract is effective and legally binding as of the Effective Date and, unless terminated as provided for in this section, subject to the mutual written agreement of both Parties, this Contract may be extended for up to four (4) additional one (1) year periods after the expiration of the initial one (1) year period. VITA will issue a written notification to the Supplier stating the extension period, 30 days prior to the expiration of any current term.

VITA may terminate this Contract, in whole or in part, upon not less than (30) days prior written notice at any time for any reason. Supplier shall submit any contractual dispute to VITA for resolution according to the terms of the Dispute Resolution Section. Upon termination, VITA shall have no future liability except for Services rendered prior to the termination date.

4. SOFTWARE LICENSE

License rights to the Software Updates and license types shall as be defined in the contract under which the Authorized User obtained Software license(s).

5. FEES, ORDERING AND PAYMENT PROCEDURE

A. Fees and Charges

As consideration for the Services performed hereunder, an Authorized User shall pay Supplier the fee(s) set forth on Exhibit B, which lists any and all fees and charges. The fees and any associated discounts shall be applicable throughout the term of this Contract; provided, however, that in the event the fees or discounts apply for any period less than the entire term, Supplier agrees that it shall not increase the fees more than once during any twelve (12) month period, commencing at the end of year one (1). No such increase shall exceed the lesser of 3% or the annual increase in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, as published by the Bureau of Labor Statistics of the Department of Labor (<http://www.bls.gov/cpi/home.htm>), for the effective date of the increase compared with the same index one (1) year prior. Any such change in price shall be submitted to all Authorized Users in writing in accordance with the above and shall not become effective for sixty (60) days thereafter. Supplier agrees to offer price reductions to ensure compliance with the Competitive Pricing Section.

B. Reproduction Rights

At an Authorized User's request, Supplier shall provide the Authorized User with a reproducible diskette or CD of any Software Update provided pursuant to the Services. Such Authorized User shall be responsible for making copies and distributing the Software Update as required.

C. Ordering

Notwithstanding all Authorized User's rights to purchase Supplier's Services under this Contract, an Authorized User is under no obligation to purchase from Supplier any of Supplier's services. This Contract is non-exclusive and all Authorized Users may, at their sole discretion, purchase, receive benefits from third party suppliers of services similar to, or in competition with, the services provided by Supplier.

Supplier is required to accept any order placed through the eVA electronic procurement website portal (<http://www.eva.state.va.us>). eVA is the Commonwealth of Virginia's total electronic procurement solution. State agencies, as defined in §2.2-2006 of the Code of Virginia, shall order through eVA. All other Authorized Users are encouraged to order through eVA, but may order through the following means:

- i). Any order/payment transaction processed through the Commonwealth of Virginia's contract with the GE MASTERCARD. Each order must not exceed \$5,000, or the then-current charge card limit.
- ii). Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Services available under this Contract. Under no circumstances shall any Authorized User have the authority to modify this Contract.

D. Invoice Procedures

Supplier shall remit each invoice to the bill to address provided with the order promptly after all Services have been accepted. Payment for Services shall be quarterly unless otherwise stated herein, or in any order referencing this Contract. No invoice shall include any costs other than those identified in Exhibit B or the executed order referencing this Contract. Without limiting the foregoing, all shipping costs are the Supplier's responsibility except to the extent such charges are identified in Exhibit B, or as noted in any executed order referencing this Contract. Invoices issued by the Supplier shall identify at a minimum:

- i). Service type and description
- ii). Quantity, charge and extended pricing for each Service item
- iii). Applicable order date
- iv). This Contract number and the applicable order number
- v). Supplier's Federal Employer Identification Number (EIN).

ALL CONTRACTUAL OBLIGATIONS UNDER THIS CONTRACT IN CONNECTION WITH AN ORDER PLACED BY ANY PUBLIC BODY (as that term is defined in §2.2-4301 of the Code of Virginia) OF ANY COUNTY, CITY OR TOWN LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA ARE THE SOLE OBLIGATION OF THE COUNTY CITY OR TOWN PLACING THE ORDER AND NOT THE RESPONSIBILITY OF VITA.

E. Purchase Payment Terms

All payment obligations under this Contract are subject to the availability of legislative appropriations for this purpose. In the event of non-appropriation of funds for the items under this Contract, VITA may terminate this Contract, or any order, for those services for which funds have not been appropriated. Written notice will be provided to the Supplier as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, VITA may terminate this Contract, or an Authorized User may terminate an order, for services dependent on such federal funds without further obligation.

Supplier is responsible for the accuracy of its billing information. Supplier agrees not to issue invoices hereunder until Services have been rendered. Charges older than ninety (90) days may not be paid.

If there are any disputed items, an Authorized User shall pay all undisputed charges and promptly notify Supplier in writing of any disputed amount. Supplier shall thereupon review its records, and, if it does not concur with the Authorized User, provide the Authorized User with documentation to support the charge. All payment terms are net 30 days after Acceptance.

F. Supplier's Report of Sales and Industrial Funding Adjustment

The Supplier shall submit the "Supplier Monthly Report of Sales" which is available online at: (upon request). The report shall be submitted in electronic form via electronic mail to the VITA Contract Administrator and the VITA Controller (email addresses to be provided upon award), by the 10th day of every month, reporting all invoices paid by VITA for the preceding month. The report shall also show a cumulative record of all sales which shall carry forward for the duration of the Contract. The Supplier Monthly Report of Sales template (in MS Excel format) indicated at the link above is required to be used by the Supplier and provided to VITA.

The "Supplier Monthly Report of Sales" is a detailed record that is prepared from actual invoices submitted to and paid by the Authorized User pursuant to this Contract. Data submitted shall include Name of Project, Supplier's tax identification number, invoice date, invoice number, order number, name of requesting entity, User name and telephone number, amount billed for services performed for previous month, and IT service category.

The Supplier shall submit Industrial Funding Adjustment payment at the same time as submitting the "Supplier Monthly Report of Sales" in the form of a check or electronic funds disbursement made payable to the Controller of VITA, based on 2% of total sales under this Contract. Supplier shall include this Contract number, "report amounts" and "report period" with all Industrial Funding Adjustment payments. Supplier shall remit Industrial Funding Adjustment payments made via check to: VITA, ATTN: Controller; 110 South 7th Street, 3rd Floor; Richmond, VA 23219-3931. Failure to comply with reporting and payment requirements of this section shall result in default of Contract.

6. TRAINING AND DOCUMENTATION

The maintenance fee includes all costs for the training of one Authorized User at a designated location on the installation of the Software Updates, and the use and operation of the Software as patched, fixed, upgraded, or updated, including instruction in any necessary conversion of such Authorized User's data for such use. Pursuant to a mutually agreed upon schedule, Supplier shall provide sufficient personnel experienced and qualified to conduct such training. Available optional training, and applicable pricing and discounts, are described in Exhibit B.

Should the Supplier revise the Documentation, Supplier shall deliver to any Authorized User, one (1) complete hard copies or electronic media of Documentation, as requested by such Authorized User. Authorized User's right to modify, copy, or distribute the Documentation shall be as defined in the contract under which such Authorized User licensed the Software.

7. DELIVERY AND INSTALLATION

A. Scheduling

Supplier shall deliver Software Updates according to the delivery dates set forth on the appropriate order or as mutually agreed by Supplier and Authorized User.

B. Installation of Software

The Software Updates shall be deemed to be installed when all programs, program libraries and user interfaces are copied to and initialized on the appropriate equipment as executable by having the ordering Authorized User invoke the primary function of each major component of the patched, fixed, upgraded, or updated Software or when Acceptance criteria have been met.

8. ACCEPTANCE TEST

A. Acceptance Criteria

A Software Update shall be accepted when the Authorized User determines that it successfully operates in accordance with the Requirements as described in the contract under which Authorized User licensed the Software. Such Authorized User agrees to commence Acceptance testing within thirty (30) days after receipt of the Software Update. Acceptance testing will be no longer than thirty (30) days for the first instance of each Update. Only pre-approved travel expenses incurred will be reimbursable by such Authorized User at the then current Commonwealth of Virginia per diem amounts (<http://www.doa.state.va.us/procedures/AdminServices/capp/pdfdocs/20335.pdf>)

B. Cure Period

Supplier shall correct the non-conformities identified hereunder and shall thereafter re-submit such previously non-conforming Software Update for re-testing within thirty (30) days of written notice of non-conformance, or as otherwise agreed between the Authorized User and Supplier. In the event that Supplier fails to deliver a Software Update which meets the Requirements, such Authorized User may, in its sole discretion: (i) reject the Software Update in its entirety and recover amounts previously paid hereunder; (ii) issue a "partial Acceptance" of the Software Update with an equitable adjustment in the price to account for such deficiency; or (iii) conditionally accept the applicable Software Update while reserving its right to revoke Acceptance if timely correction is not forthcoming.

9. SUPPLIER PERSONNEL

A. Selection and Management of Supplier Personnel

Supplier shall take such steps as may be necessary to ensure that all Supplier personnel provided under this Contract are competent and knowledgeable of the contractual arrangements and the applicable SOW between VITA and Supplier. Supplier shall be solely responsible for the conduct of its employees and subcontractors and shall ensure that such employees and subcontractors comply with the appropriate Authorized User's site security, information security and personnel conduct rules, as well as applicable federal, state and local laws. VITA reserves the right to require the immediate removal from such Authorized User's premises of any employee, subcontractor or agent of Supplier whom such Authorized User believes has failed to comply or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach.

B. Supplier Personnel Supervision

Supplier and VITA acknowledge that Supplier shall be and is the sole employer of Supplier personnel, and shall have sole responsibility to supervise, counsel, discipline, review, evaluate, set the pay rates of and terminate the employment of Supplier personnel.

10. GENERAL WARRANTY

Supplier warrants and represents to VITA the Software Updates and Services described in Exhibit A as follows:

A. Ownership

Supplier is the owner of the Software Updates or otherwise has the right to grant to all Authorized Users the license to use the Software Updates granted hereunder without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Supplier has the right to provide the Services without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

B. Software Updates and Documentation

Supplier warrants the following with respect to the Software Updates:

-
- i). The Software Updates provided hereunder are at the current release level unless an Authorized User specifies an older version in its order;
 - ii). No Update provided by Supplier hereunder shall degrade the Software, cause any other warranty to be breached, or require an Authorized User to acquire additional hardware equipment or software;
 - iii). Supplier warrants that the Documentation and all modifications or amendments thereto which Supplier is required to provide under this Contract shall be sufficient in detail and content to allow a user to understand fully the Software, as patched, fixed, upgraded, or updated, without reference to any other materials or information.
 - iv). Provide to all Authorized Users no later than the first day of general release, copies of the Software and Documentation revised to reflect any enhancements, including all new releases, upgrades, and access modes, to the Software made by Supplier, including, without limitation, modifications to the Software which can increase the speed, efficiency or base of operation of the Software or add additional capabilities to or otherwise improve the functionality of the Software.

C. Malicious Code

Supplier has used its best efforts through quality assurance procedures to ensure that there are no Computer Viruses or undocumented features in the Software Updates at the time of delivery to an Authorized User; and the Software Updates do not contain any embedded device or code (e.g., time bomb) that is intended to obstruct or prevent any Authorized User's use of the Software. Notwithstanding any rights granted under this Contract or at law, Supplier hereby waives under any and all circumstances any right it may have or may hereafter have to exercise Electronic Self-Help. Supplier agrees that an Authorized User may pursue all remedies provided under law in the event of a breach or threatened breach of this Section, including injunctive or other equitable relief.

D. Open Source

Supplier will notify all Authorized Users if a Software Update contains any Open Source code and identify the specific Open Source License that applies to any embedded code or code dependent on Open Source code, provided by Supplier under this contract.

E. Supplier's Viability

Supplier warrants that it has the financial capacity to perform and continue to perform its obligations under this Contract; that Supplier has no constructive or actual knowledge of a potential legal proceeding being brought against Supplier that could threaten performance of this Contract and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

F. Performance

- v). All Services shall be performed with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Supplier shall be responsible for the professional quality, technical accuracy, completeness and coordination of all plans, information, specifications, computer programs, software, Deliverables and Services furnished under this Contract;
- vi). If the Services are pursuant to a particular Request for Proposal, such Services and Deliverables shall be fit for the particular purposes specified by VITA and Supplier is possessed of superior knowledge with respect to the Services and is aware that VITA is relying on Supplier's skill and judgment in providing the Services;
- vii). The Services shall meet or exceed the Requirements;
- viii). The Services shall be performed in a professional manner;

THE OBLIGATIONS OF SUPPLIER UNDER THIS SECTION ARE MATERIAL. SUPPLIER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY OTHER PARTICULAR PURPOSE.

11. SERVICES

Supplier shall provide the following Services to any Authorized User to maintain the Software in accordance with the Requirements:

A. Known Defects

Promptly notify all Authorized Users of any defects or malfunctions in the Software, Software Updates, or Documentation of which it learns from any source other than an Authorized User, correct any such defects or malfunctions or provide a work around until corrected, within thirty (30) days of knowledge of such defect or malfunction and provide all Authorized Users with corrected copies of same.

B. Coverage

8:00am – 5:00pm eastern standard time Monday through Friday, provide to any Authorized Users all reasonably necessary telephone or written consultation requested by such Authorized Users in connection with use, problems and operation of the Software.

C. Service Levels

Respond to problems with the Software identified by an Authorized User in no more than one (1) hour after notification. Resolve all problems according to the following:

- i). Priority 1 (system down) within six (6) hours
- ii). Priority 2 (certain processing interrupted or malfunctioning but system able to process) within twenty four (24) hours
- iii). Priority 3 (minor intermittent malfunctioning, system able to process data) within three (3) days.

The level of severity (e.g., 1, 2, 3), shall be defined by such Authorized Users.

D. Software Evolution

Should Supplier merge or splinter the Software previously provided to any Authorized User, such action on the part of Supplier shall not in any way result in any Authorized User being charged additional license or support fees in order to receive enhancements, releases, upgrade or support for the Software.

E. Escalation Procedures [To be provided by Supplier]

F. Remedies

If Supplier is unable to make the Software conform, in all material aspects, within thirty (30) days following notification by an Authorized User, Supplier shall, at such Authorized User's request, accept return of the Software, and return all monies paid by such Authorized User for the returned Software and Documentation.

12. COMPETITIVE PRICING

Supplier warrants and agrees that each of the charges, economic or product terms or warranties granted to VITA pursuant to this Contract are comparable to or better than the equivalent charge, economic or product term or warranty being offered to any commercial or government customer of Supplier. If Supplier enters into any arrangements with another customer of Supplier or with an Authorized User to provide Services under more favorable prices, as the prices may be indicated on Supplier's current U.S. and International price list or comparable document, then this Contract shall be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Supplier shall immediately notify VITA of such change.

13. CONFIDENTIALITY

A. Treatment and Protection

Each Party agrees to (i) hold in strict confidence all Confidential Information of the other Party, (ii) use the Confidential Information solely to perform or to exercise its rights under this Contract, and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third-party. However, an Authorized User may disclose the Confidential Information as delivered by Supplier to subcontractors, contractors or agents of such Authorized User that are bound by a non-disclosure contract with such Authorized User. Each Party shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in no event shall such measures be less than reasonable care).

B. Exclusions

The term "Confidential Information" shall not include information that is:

- i). in the public domain through no fault of the receiving Party or of any other person or entity that is similarly contractually or otherwise obligated;
- ii). obtained independently from a third-party without an obligation of confidentiality to the disclosing Party and without breach of this Contract;
- iii). independently developed by the receiving Party without reference to the Confidential Information of the other Party; or
- iv). required to be disclosed under The Virginia Freedom of Information Act (§§2.2-3700 et seq. of the Code of Virginia) or similar laws or pursuant to a court order.

C. Return or Destruction

Upon the termination or expiration of this Contract or upon the earlier request of the disclosing Party, the receiving Party shall (i) at its own expense, (a) promptly return to the disclosing Party all tangible Confidential Information (and all copies thereof except the record required by law) of the disclosing Party, or (b) upon written request from the disclosing Party, destroy such Confidential Information and provide the disclosing Party with written certification of such destruction, and (ii) cease all further use of the other Party's Confidential Information, whether in tangible or intangible form.

14. LIABILITY AND INDEMNIFICATION

Supplier agrees to indemnify, defend and hold harmless any Authorized User, its officers, directors, agents and employees ("Authorized User's Indemnified Parties") from and against any and all third party claims, demands, proceedings, suits and actions, including any related liabilities, obligations, losses, damages, fines, judgments, settlements, expenses (including attorneys' and accountants' fees and disbursements) and costs (each, a "Claim" and collectively, "Claims"), incurred by, borne by or asserted against any of Authorized User's Indemnified Parties to the extent such Claims in any way relate to, arise out of or result from: (i) any intentional or willful conduct or negligence of any employee or subcontractor of Supplier, (ii) breach of any representation, warranty or covenant of Supplier contained herein, (iii) any defect in the Software Updates or the Services, or (iv) any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software Updates or Services. Selection and approval of counsel and approval of any settlement shall be accomplished in accordance with all applicable laws, rules and regulations. For state agencies the applicable laws include §§ 2.2-510 and 2.2-514 of the Code of Virginia. In all cases the selection and approval of counsel and approval of any settlement shall be satisfactory to the Authorized User against whom the claim has been asserted.

In the event of a Claim pursuant to any actual or alleged infringement or misappropriation of any third party's intellectual property rights by any of the Software Updates or Services, and in addition to all other obligations of Supplier in this Section, Supplier shall at its expense, either (a) procure for all Authorized Users the right to continue use of such infringing Software Updates or Services, or any component thereof; or (b) replace or modify such infringing Software Updates or Services, or any

component thereof, with non-infringing Software Updates or Services satisfactory to VITA. And in addition, Supplier shall provide any Authorized User with a comparable temporary replacement Software Update or reimburse any Authorized User for the reasonable costs incurred by such Authorized User in obtaining an alternative product in the event such Authorized User cannot use the affected Software Update. If Supplier cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Supplier shall accept the return of the infringing component of the Software Update or Services, along with any other components of any products rendered unusable by any Authorized User as a result of the infringing component, and refund the price paid to Supplier for such components.

EXCEPT WITH REGARD TO CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR INFRINGEMENT, AND THE INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, WITH RESPECT TO EACH OF WHICH LIABILITY SHALL NOT BE LIMITED PURSUANT TO THIS SECTION, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR THE INDEMNIFIED PARTIES OF SUCH PARTY) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, EXCEPT WHEN SUCH DAMAGES ARE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS.

15. SECURITY COMPLIANCE

Supplier agrees to comply with all provisions of VITA's then current security procedures as are pertinent to Supplier's operation and have been supplied to Supplier by VITA and further agrees to comply with all applicable federal, state and local laws. Supplier shall indemnify, defend, and hold VITA, its officers, directors, employees and agents harmless from and against any and all fines, penalties (whether criminal or civil), judgments, damages and assessments, including reasonable expenses suffered by, accrued against, or charged to or recoverable from VITA, its officers, directors, agents or employees, on account of the failure of Supplier to perform its obligations pursuant to this Section.

16. BANKRUPTCY

If Supplier becomes insolvent, takes any step leading to its cessation as a going concern, fails to pay its debts as they become due, or ceases business operations continuously for longer than fifteen (15) business days, then VITA may immediately terminate this Contract on notice to Supplier unless Supplier immediately gives VITA adequate assurance of the future performance of this Contract. If bankruptcy proceedings are commenced with respect to Supplier, and if this Contract has not otherwise terminated, then VITA may suspend all further performance of this Contract until Supplier assumes this Contract and provides adequate assurance of performance thereof or rejects this Contract pursuant to Section 365 of the Bankruptcy Code or any similar or successor provision, it being agreed by the Parties that this is an executory contract. Any such suspension of further performance by VITA pending Supplier's assumption or rejection shall not be a breach of this Contract, and shall not affect VITA's right to pursue or enforce any of its rights under this Contract or otherwise.

17. GENERAL

A. Relationship Between VITA and Supplier

Supplier has no authority to contract for VITA or in any way to bind, to commit VITA to any agreement of any kind, or to assume any liabilities of any nature in the name of or on behalf of VITA. Under no circumstances shall Supplier, or any of its employees, hold itself out as or be considered an agent or an employee of VITA, and VITA shall have no duty to provide or maintain any insurance or other employee benefits on behalf of Supplier or its employees. Supplier represents and warrants that it is an independent contractor for purposes of federal, state and local employment taxes and agrees that VITA is not responsible to collect or withhold any federal, state or local employment taxes, including, but not limited to, income tax withholding and social

security contributions, for Supplier. Any and all taxes, interest or penalties, including, but not limited to, any federal, state or local withholding or employment taxes, imposed, assessed or levied as a result of this Contract shall be paid or withheld by Supplier or, if assessed against and paid by VITA, shall be reimbursed by Supplier upon demand by VITA.

B. Incorporated Contractual Provisions

The contractual provisions at the following URL are statutorily mandated provisions that are hereby incorporated by reference, including the contractual claims provision §2.2-4363 of the Code of Virginia: http://www.vita.virginia.gov/procurement/documents/terms_05-06sw.pdf

C. Governing Law

This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to that body of law controlling choice of law. Any and all litigation shall be brought in the circuit courts of the Commonwealth of Virginia. The English language version of this Contract prevails when interpreting this Contract. The United Nations Convention on Contracts for the International Sale of Goods and all other laws and international treaties or conventions relating to the sale of goods are expressly disclaimed. UCITA shall apply to this Contract only to the extent required by §59.1-501.15 of the Code of Virginia.

D. Dispute Resolution

In accordance with §2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the public body from whom the relief is sought no later than sixty (60) days after final payment; however, written notice of the Supplier's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Supplier's written claim.

The Supplier may not invoke any available administrative procedure under §2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Supplier, within six (6) months of the date of the final decision on the claim, invokes appropriate action under §2.2-4364, Code of Virginia or the administrative procedure authorized by §2.2-4365, Code of Virginia.

Upon request from the public body from whom the relief is sought, Supplier agrees to submit any and all contractual disputes arising from this Contract to VITA's alternative dispute resolution (ADR) procedures. Supplier may invoke VITA's ADR procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

In the event of any breach by VITA, Supplier's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Supplier's remedies include the right to terminate any license or support services hereunder.

E. Advertising and Use of Proprietary Marks

Supplier shall not use any Authorized User's name or refer to any Authorized User, directly or indirectly, in any press release or formal advertisement without receiving prior written consent of such Authorized User. In no event may Supplier use a proprietary mark without receiving the prior written consent of the Authorized User.

F. Notices

Any notice required or permitted to be given under this Contract shall be in writing and shall be deemed to have been sufficiently given if delivered in person, or if deposited in the U.S. mails, postage prepaid, for mailing by registered, certified mail, or overnight courier service addressed to the addresses shown on the signature page. Either Party may change its address for notice purposes by giving the other Party notice of such change in accordance with this Section.

G. No Waiver

Any failure to enforce any terms of this Contract shall not constitute a waiver.

H. Assignment

This Contract shall be binding upon and shall inure to the benefit of the permitted successors and assigns of each party hereto. Supplier may not assign, subcontract, delegate or otherwise convey this Contract or any of its rights and obligations hereunder, to any entity without the prior written consent of VITA, and any such attempted assignment or subcontracting without consent shall be void. VITA may assign this Contract to any entity, so long as the assignee agrees in writing to be bound by the all the terms and conditions of this Contract.

If any law limits the right of the Parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be thirty (30) days after the Supplier gives VITA prompt written notice of the assignment, signed by authorized representatives of both the Supplier and the assignee. Any payments made prior to receipt of such notification shall not be covered by this assignment.

I. Captions

The captions are for convenience and in no way define, limit or enlarge the scope of this Contract or any of its Sections.

J. Severability

Invalidity of any term of this Contract, in whole or in part, shall not affect the validity of any other term. The Parties further agree that in the event such provision is an essential part of this Contract, they shall immediately begin negotiations for a suitable replacement provision.

K. Survival

The provisions of this Contract regarding license to the Software Updates, Rights To Work Products, Warranty, Escrow, Confidentiality, Liability and Indemnification, and the General Provisions shall survive the expiration or termination of this Contract.

L. Force Majeure

Neither Party shall be responsible for failure to meet its obligations under this Contract if the failure arises from causes beyond the control and without the fault or negligence of the non-performing Party. If any performance date under this Contract is postponed or extended pursuant to this section for longer than thirty (30) calendar days, VITA, by written notice given during the postponement or extension, may terminate Supplier's right to render further performance after the effective date of termination without liability for that termination.

M. Remedies

The remedies set forth in this Contract are intended to be cumulative. In addition to any specific remedy, VITA reserves any and all other remedies that may be available at law or in equity.

N. Offers of Employment

During the first twelve (12) months of the Contract, should Supplier hire an employee of an Authorized User who has substantially worked on any project covered by this Contract without prior written consent, the Supplier shall be billed for 50% of the employee's annual salary in effect at the time of termination.

O. Entire Contract

The following Exhibits, including all subparts thereof, are attached to this Contract and are made a part of this Contract for all purposes:

- i). Exhibit A Intentional left blank
- ii). Exhibit B Service Charges and Payment Schedule
- iii). Exhibit C Escrow Agreement

This Contract, its Exhibits, and any prior non-disclosure agreement constitute the entire agreement between the Parties and supersede any and all previous representations, understandings, discussions or agreements between VITA and Supplier as to the subject matter hereof. This Contract may only be amended by an instrument in writing signed by VITA and

Supplier. In the event of a conflict, the following order of precedence shall apply: contract, exhibits, order.

VITA and Supplier each acknowledge that it has had the opportunity to review this Contract with its legal counsel.

Executed as of the last date set forth below by the undersigned authorized representatives of the Parties.

Supplier

By:

(Signature)

Name:

(Print)

Title, Its:

Date:

VITA

By:

(Signature)

Name:

(Print)

Title, Its:

Date:

Address for Notice:

Attention:

Address for Notice:

Attention: Contract Administrator

Exhibit A

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Exhibit B

ResQPortal Pricing

- **Each ResQPortal “Production” Server Software License:**
 - \$10,000 (ea.) for installation on a Mid-Range system - NT, Windows 2000, Windows XP, OS/400, UNIX, Linux
 - \$25,000 for installation on a Mainframe systems – z/OS, OS/390
- **Each ResQPortal Non-Production Server Software License:**
 - \$5,000 (ea.) for Mid-Range system - NT, Windows 2000, Windows XP, OS/400, UNIX, Linux
 - \$12,000 (ea.) for Mainframe system - z/OS, OS/390
- **Customization Studio Software License:**
 - \$8,000 ea.

Concurrent ResQPortal Sessions (pricing and “breakpoints”)

<u>Quantities</u>	<u>Price Per User</u>
1 - 199	\$199
200 - 499	\$179
500 - 999	\$159
1,000 – 4,999	\$129
5,000 – Or more	Enterprise license (Special Quote)

II. Maintenance and Upgrades:

A. Combined Upgrade Protection/Maintenance: 25% per annum of total purchase

- E-mail support
- Phone support as necessary
- All New Version Release Upgrades
- All Point (.) release upgrades

Purchase of Combined Upgrade Protection/Maintenance must commence at the start of the original software purchase.

III. Services:

A. Support, Customization, Custom Services and Development: \$1,500 - \$2,000 per day, plus T&E., including:

Proofs of Concept
Screen Customization
Installation and Testing

B. End-user Training: \$1,500 per day, plus T&E. Maximum class size five (5).

ResQPortal Options:

- SSL - \$10,000
- AlertU Server Software \$10,000
- AlertU concurrent session license \$59 (ea.)

Special Projects are available on a time and materials basis, and are subject to individualized bid.

Attachment A

Includes all patches, updates and fixes pursuant to this agreement.